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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/440,340	11/15/1999	ERIC CHRISTIAN HINCE		2831

7590 12/14/2004
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EXAMINER

WARE, DEBORAH K

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/440,340	Applicant(s) HINCE ET AL.	
	Examiner Deborah K. Ware	Art Unit 1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-26, 28-46, 48-69 and 74-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-26, 28-46, 48-67 and 75 is/are allowed.
- 6) ☒ Claim(s) 68, 69 and 74 is/are rejected.
- 7) ☒ Claim(s) 76-77 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. <u>12092004</u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 24-26, 28-46, 48-69 and 74-77 are presented for reconsideration on the merits.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Papers

The miscellaneous paper filed September 29, 2004, as well as the amendment and response therewith and terminal disclaimer have all been received and entered of record.

Claim Objections

Claims 76-77 are objected to for not referring back to step a in step b with appropriate syntax using the term solid-chemical composition, and although the claims are considered clear with respect to how the composition is extracting and absorbing the chemical contaminants, it is suggested to insert --by said solid-chemical composition-- in step b at line 2 after "environmental media".

Response to Applicant's Amendment and response therewith

Applicants' response has overcome all rejections except the following which have been necessitated by Applicant's Amendment:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 68-69 and 74 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The methods as claimed whereby a chemical composition in accordance with claim 24 or claim 30 is applied to soils and wherein in addition thereof, a portion of the said plant-fiber containing materials are cultivated in-situ within the soils are not clearly described by the instant specification as being carried out together.

The application of the chemical composition to soils as set forth in claim 24 or claim 30 is described to be carried out but not the in-situ cultivation of a portion of the said plant-fiber containing materials as set forth in these claims; nor in combination with the chemical composition as set forth in these claims. The specification does not support growing a portion of said plant-fiber containing materials in the soils; although at pages 13, last complete paragraph, line 5, and bridging pages 17-18, last to first lines of respective pages 17 and 18, the specification does support a combination of dried plant materials of Leguminosae and Phaeophyta and agriculturally cultivated plant materials of the specific plant family Leguminosae as well as supporting the application of leguminous materials via agriculturally cultivated in-situ by direct plantings of legume seeds or plants in the contaminated soils.

These appear to be two separate embodiments: application of a dry mixture and application of legume seeds or leguminous material for cultivating in the soil, which are supported by the specification but not as being useful together, especially since the specification states at bridging pages 17-18 that the leguminous materials can be agriculturally cultivated in-situ as an alternative to applying it as a dry mixture. The claim language as set forth in these claims 68-69 and 74 appear to be new matter and should be canceled or amended as follows:

Claim 68, at lines 5-7, deletion of "and wherein a portion of the said plant-fiber containing materials from one or more of the said plant families Leguminosae, Gossypium and Cannabacea are cultivated in-situ within said soils" and insertion of --to extract and absorb the hydrophobic chemical contaminants and promote biodegradation of the contaminants by anaerobic bioremediation-- .

Claim 68, at lines 5-7, deletion of "and wherein a portion of the said plant-fiber containing materials from one or more of the said plant families Leguminosae, Gossypium, Cannabacea, Triticum and Aegilops are cultivated in-situ within said soils" and insertion of -- --to extract and absorb the hydrophobic chemical contaminants and promote biodegradation of the contaminants by anaerobic bioremediation-- .

Claim 74, line 2, deletion of "plant-fiber containing materials which are cultivated in-situ are subsequently exposed" and insertion of --bioremediation comprises exposing said soils-- .

Claims 68-69 and 74 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 68-69 and 74 are rendered vague and indefinite for the recitation of "and wherein a portion of" in claims 68 and 69 at lines 5, respectively because it is unclear what portion is applied per se? Therefore, the metes and bounds of the claims can not be determined. Also it is unclear that the use of cultivated plants and the solid-chemical composition are supported by the instant specification as being used together as claimed.

The claims are free of the prior art.

Claims 24-26, 28-46, 48-67, and 75 are deemed allowable subject matter, but not claims 68-69, 74 and 76-77. The above changes are suggested to place these claims into condition for allowance.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

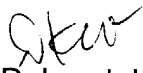
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Deborah K. Ware
December 11, 2004


DAVID M. NAFF
PRIMARY EXAMINER
ART UNIT 1651